

ASSEMBLY BILL

No. 2177

Introduced by Assembly Member Kuehl

February 19, 1998

An act to amend Sections 6250, 6380, 6380.5, and 6387 of the Family Code, and to amend Sections 13701 and 13711 of the Penal Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 2177, as introduced, Kuehl. Domestic violence: protective orders.

Existing law authorizes a judicial officer to issue an ex parte emergency protective order when a law enforcement officer has reasonable grounds to believe that a person is in immediate and present danger of domestic violence, that a child is in immediate or present danger of abuse by a family or household member, or that a child is in immediate and present danger of being abducted by a parent or relative, as specified.

This bill would authorize a judicial officer to issue an ex parte emergency protective order when a law enforcement officer has been informed of the existence of a restraining order by a person who claims to have obtained such an order issued by a court in this state, or by a court in another state, tribe, or territory, and the person is unable to produce a copy and the officer can not verify the existence of the order.

Under existing law, the Judicial Council is required to assist local courts that are responsible for issuing protective orders by developing informational packets describing the general

procedures for obtaining a domestic violence restraining order.

This bill would require the informational packet to contain a statement that the protective order is enforceable in any state, territory, or reservation, and provide the names of possible agencies to contact regarding enforcement in those jurisdictions. This bill would also require the Judicial Council to adopt rules of court that define the registration process regarding the Domestic Violence Protective Order Registry, and require the filing and sealing of foreign protective orders with access only provided under certain conditions, as specified.

Existing law requires that a valid out-of-state protective or restraining order resulting from domestic violence or family violence be given full faith and credit by the courts of this state, and, after entry into the Domestic Violence Protective Order Registry, be enforced as if issued in this state.

This bill would delete the provision requiring that a valid out-of-state protective or restraining order be entered into the Domestic Violence Protective Order Registry prior to being enforced as if issued in this state, as specified.

Existing law requires the county clerk to provide a petitioner of a protective order, without cost, with 5 certified, stamped, and endorsed copies of the protective order issued pursuant to certain provisions of law, as specified.

This bill would require the county clerk to do the same regarding an order issued by another state, tribe, or territory, and would authorize the court clerk to certify that a determination of validity of the order has been made, if necessary.

Existing law requires law enforcement agencies to develop, adopt, and implement written policies that encourage the arrest of domestic violence offenders where there is probable cause that an offense has been committed, and require the arrest of the offender if there is probable cause that a protective order has been violated.

This bill would specify that protective orders issued in any other state, tribe, or territory are among the orders subject to these policies.



Existing law requires the clerk of the superior court, whenever a protective order with respect to domestic violence is applied for or issued, to distribute to the protected person a pamphlet with certain information, as specified.

This bill would require that the pamphlet contain notice that a protective order is enforceable in any state, territory, or reservation, and also include the names of possible agencies to contact regarding enforcement in those jurisdictions.

Because this bill would impose additional duties on law enforcement officers and county employees, it would establish a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6250 of the Family Code is
2 amended to read:

3 6250. A judicial officer may issue an ex parte
4 emergency protective order where a law enforcement
5 officer asserts reasonable grounds to believe any of the
6 following:

7 (a) That a person is in immediate and present danger
8 of domestic violence, based on the person's allegation of
9 a recent incident of abuse or threat of abuse by the person
10 against whom the order is sought.

11 (b) That a child is in immediate and present danger of
12 abuse by a family or household member, based on an

1 allegation of a recent incident of abuse or threat of abuse
2 by the family or household member.

3 (c) That a child is in immediate and present danger of
4 being abducted by a parent or relative, based on a
5 reasonable belief that a person has an intent to abduct the
6 child or flee with the child from the jurisdiction or based
7 on an allegation of a recent threat to abduct the child or
8 flee with the child from the jurisdiction.

9 (d) *That the officer has been informed of the existence*
10 *of a restraining order by a person who claims to have*
11 *obtained such an order, issued by a court in this state or*
12 *in any other state, tribe, or territory, and the person is*
13 *unable to produce a copy of the order and the officer is*
14 *unable to verify the existence of the order.*

15 SEC. 2. Section 6380 of the Family Code is amended
16 to read:

17 6380. (a) Each county, with the approval of the
18 Department of Justice, shall, by July 1, 1996, develop a
19 procedure, using existing systems, for the electronic
20 transmission of data, as described in subdivision (b), to
21 the Department of Justice. The data shall be
22 electronically transmitted through the California Law
23 Enforcement Telecommunications System (CLETS) of
24 the Department of Justice by law enforcement personnel,
25 or with the approval of the Department of Justice, court
26 personnel or another appropriate agency capable of
27 maintaining and preserving the integrity of both the
28 CLETS and the Domestic Violence Protective Order
29 Registry, as described in subdivision (e). Data entry is
30 required to be entered only once under the requirements
31 of this section, unless the order is served at a later time.
32 A portion of all fees payable to the Department of Justice
33 under subdivision (a) of Section 1203.097 of the Penal
34 Code for the entry of the information required under this
35 section, based upon the proportion of the costs incurred
36 by the local agency and those incurred by the
37 Department of Justice, shall be transferred to the local
38 agency actually providing the data.

39 (b) Upon the issuance of a protective order to which
40 this division applies pursuant to Section 6221, or the

1 issuance of a temporary restraining order or injunction
2 relating to domestic violence pursuant to Section 527.8 of
3 the Code of Civil Procedure, or the issuance of a criminal
4 court protective order under subdivision (g) of Section
5 136.2 of the Penal Code, or the issuance of a juvenile court
6 restraining order related to domestic violence pursuant
7 to Section 213.5, 304, or 362.4 of the Welfare and
8 Institutions Code, or upon registration with the court
9 clerk of a domestic violence protective order issued by
10 the court of another state, and including any of the
11 foregoing orders issued in connection with an order for
12 modification of a custody or visitation order issued
13 pursuant to a dissolution, legal separation, nullity, or
14 paternity proceeding the Department of Justice shall be
15 immediately notified of the contents of the order and the
16 following information:

17 (1) The name, race, date of birth, and other personal
18 descriptive information of the respondent as required by
19 a form prescribed by the Department of Justice.

20 (2) The names of the protected persons.

21 (3) The date of issuance of the order.

22 (4) The duration or expiration date of the order.

23 (5) The terms and conditions of the protective order,
24 including stay-away, no-contact, residency exclusion,
25 custody, and visitation provisions of the order.

26 (6) The department or division number and the
27 address of the court.

28 (7) Whether or not the order was served upon the
29 respondent.

30 All available information shall be included; however,
31 the inability to provide all categories of information shall
32 not delay the entry of the information available.

33 (c) The information conveyed to the Department of
34 Justice shall also indicate whether the respondent was
35 present in court to be informed of the contents of the
36 court order. The respondent's presence in court shall
37 provide proof of service of notice of the terms of the
38 protective order. The respondent's failure to appear shall
39 also be included in the information provided to the
40 Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. *The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and provide the names of possible agencies to contact regarding enforcement in those jurisdictions.*

(h) For the purposes of this part, “electronic transmission” shall include computer access through the

1 California Law Enforcement Telecommunications
2 System (CLETS).

3 (i) *The Judicial Council shall adopt rules of court to do*
4 *the following:*

5 (1) *Define the registration process regarding the*
6 *Domestic Violence Protective Order Registry.*

7 (2) *Require the filing of foreign protective orders.*

8 (3) *Require the sealing of foreign protective orders*
9 *and provide access only to law enforcement, the victim*
10 *upon written request with proof of identification, the*
11 *defense after arraignment on criminal charges involving*
12 *an alleged violation of the order, or upon further order of*
13 *the court.*

14 SEC. 3. Section 6380.5 of the Family Code is amended
15 to read:

16 6380.5. (a) An out-of-state protective or restraining
17 order issued by a state, tribal, or territorial court related
18 to domestic or family violence shall be deemed valid if the
19 issuing court had jurisdiction over the parties and matter
20 under the law of the state, tribe, or territory. There shall
21 be a presumption of validity where an order appears
22 authentic on its face.

23 (b) Any valid protective or restraining order related
24 to domestic or family violence issued by a court of another
25 state, tribe, or territory may be registered with a court of
26 this state in order to be entered in the Domestic Violence
27 Protective Order Registry established under this chapter.

28 (c) Any valid protective or restraining order related to
29 domestic or family violence issued by a court of another
30 state, tribe, or territory shall be accorded full faith and
31 credit by the courts of this state, and ~~after entry into the~~
32 ~~Domestic Violence Protective Order Registry~~ shall be
33 enforced as if it had been issued in this state *pursuant to*
34 *subdivision (b) of Section 6381.*

35 SEC. 4. Section 6387 of the Family Code is amended
36 to read:

37 6387. (a) The court shall order the county clerk to
38 provide to a petitioner, without cost, five certified,
39 stamped, and endorsed copies of any order issued under

1 this part, *or by any other state, tribe, or territory*, and of
2 an extension, modification, or termination of the order.

3 *(b) If a determination of validity is required, the court*
4 *clerk shall certify that such a determination has been*
5 *made.*

6 SEC. 5. Section 13701 of the Penal Code is amended
7 to read:

8 13701. (a) Every law enforcement agency in this
9 state shall develop, adopt, and implement written policies
10 and standards for officers' responses to domestic violence
11 calls by January 1, 1986. These policies shall reflect that
12 domestic violence is alleged criminal conduct. Further,
13 they shall reflect existing policy that a request for
14 assistance in a situation involving domestic violence is the
15 same as any other request for assistance where violence
16 has occurred.

17 (b) The written policies shall encourage the arrest of
18 domestic violence offenders if there is probable cause
19 that an offense has been committed. These policies also
20 shall require the arrest of an offender, absent exigent
21 circumstances, if there is probable cause that a protective
22 order issued under Chapter 4 (commencing with Section
23 2040) of Part 1 of Division 6, Division 10 (commencing
24 with Section 6200), or Chapter 6 (commencing with
25 Section 7700) of Part 3 of Division 12, of the Family Code,
26 or Section 136.2 of this code, *or any other state, tribe, or*
27 *territory*, has been violated. These policies shall
28 discourage, when appropriate, but not prohibit, dual
29 arrests. Peace officers shall make reasonable efforts to
30 identify the primary aggressor in any incident. The
31 primary aggressor is the person determined to be the
32 most significant, rather than the first, aggressor. In
33 identifying the primary aggressor, an officer shall
34 consider the intent of the law to protect victims of
35 domestic violence from continuing abuse, the threats
36 creating fear of physical injury, the history of domestic
37 violence between the persons involved, and whether
38 either person acted in self-defense. These arrest policies
39 shall be developed, adopted, and implemented by July 1,
40 1996. Notwithstanding subdivision (d), law enforcement

1 agencies shall develop these policies with the input of
2 local domestic violence agencies.

3 (c) These existing local policies and those developed
4 shall be in writing and shall be available to the public
5 upon request and shall include specific standards for the
6 following:

7 (1) Felony arrests.

8 (2) Misdemeanor arrests.

9 (3) Use of citizen arrests.

10 (4) Verification and enforcement of temporary
11 restraining orders when (A) the suspect is present and
12 (B) the suspect has fled.

13 (5) Verification and enforcement of stay-away orders.

14 (6) Cite and release policies.

15 (7) Emergency assistance to victims, such as medical
16 care, transportation to a shelter, and police standbys for
17 removing personal property.

18 (8) Assisting victims in pursuing criminal options, such
19 as giving the victim the report number and directing the
20 victim to the proper investigation unit.

21 (9) Furnishing written notice to victims at the scene,
22 including, but not limited to, all of the following
23 information:

24 (A) A statement informing the victim that despite
25 official restraint of the person alleged to have committed
26 domestic violence, the restrained person may be released
27 at any time.

28 (B) A statement that, "For further information about
29 a shelter you may contact ____."

30 (C) A statement that, "For information about other
31 services in the community, where available, you may
32 contact ____."

33 (D) A statement informing the victim of domestic
34 violence that he or she may ask the district attorney to file
35 a criminal complaint.

36 (E) A statement informing the victim of the right to go
37 to the superior court and file a petition requesting any of
38 the following orders for relief:

39 (i) An order restraining the attacker from abusing the
40 victim and other family members.

- 1 (ii) An order directing the attacker to leave the
2 household.
- 3 (iii) An order preventing the attacker from entering
4 the residence, school, business, or place of employment
5 of the victim.
- 6 (iv) An order awarding the victim or the other parent
7 custody of or visitation with a minor child or children.
- 8 (v) An order restraining the attacker from molesting
9 or interfering with minor children in the custody of the
10 victim.
- 11 (vi) An order directing the party not granted custody
12 to pay support of minor children, if that party has a legal
13 obligation to do so.
- 14 (vii) An order directing the defendant to make
15 specified debit payments coming due while the order is
16 in effect.
- 17 (viii) An order directing that either or both parties
18 participate in counseling.
- 19 (F) A statement informing the victim of the right to
20 file a civil suit for losses suffered as a result of the abuse,
21 including medical expenses, loss of earnings, and other
22 expenses for injuries sustained and damage to property,
23 and any other related expenses incurred by the victim or
24 any agency that shelters the victim.
- 25 (G) In the case of an alleged violation of Section 261,
26 261.5, 262, 286, 288a, or 289, a “Victims of Domestic
27 Violence” card which shall include, but is not limited to,
28 the following information:
- 29 (i) The names and locations of rape victim counseling
30 centers within the county, including those centers
31 specified in Section 13837, and their 24-hour counseling
32 service telephone numbers.
- 33 (ii) A simple statement on the proper procedures for
34 a victim to follow after a sexual assault.
- 35 (iii) A statement that sexual assault by a person who is
36 known to the victim, including sexual assault by a person
37 who is the spouse of the victim, is a crime.
- 38 (10) Writing of reports.
- 39 (d) In the development of these policies and
40 standards, each local department is encouraged to consult

1 with domestic violence experts, such as the staff of the
2 local shelter for battered women and their children.
3 Departments may utilize the response guidelines
4 developed by the commission in developing local policies.

5 SEC. 6. Section 13711 of the Penal Code is amended
6 to read:

7 13711. Whenever a protection order with respect to
8 domestic violence incidents, including orders issued
9 pursuant to Section 136.2 and restraining orders, is
10 applied for or issued, it shall be the responsibility of the
11 clerk of the superior court to distribute a pamphlet to the
12 person who is to be protected by the order that includes
13 the following:

14 (a) Information as specified in subdivision (i) of
15 Section 13701.

16 (b) Notice that it is the responsibility of the victim to
17 request notification of an inmate's release.

18 (c) Notice that the terms and conditions of the
19 protection order remain enforceable, notwithstanding
20 any acts of the parties, and may be changed only by order
21 of the court.

22 (d) *Notice that the protection order is enforceable in*
23 *any state, territory, or reservation, and the names of*
24 *possible agencies to contact regarding enforcement in*
25 *those jurisdictions.*

26 SEC. 7. Notwithstanding Section 17610 of the
27 Government Code, if the Commission on State Mandates
28 determines that this act contains costs mandated by the
29 state, reimbursement to local agencies and school
30 districts for those costs shall be made pursuant to Part 7
31 (commencing with Section 17500) of Division 4 of Title
32 2 of the Government Code. If the statewide cost of the
33 claim for reimbursement does not exceed one million
34 dollars (\$1,000,000), reimbursement shall be made from
35 the State Mandates Claims Fund.

36 Notwithstanding Section 17580 of the Government
37 Code, unless otherwise specified, the provisions of this act

1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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